WP(C) 5330/2000
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS

Heard Mr. U. Bhuyan, learned counsel for the petitioner and also Mr. A. Dasgupta, learned counsel for the Corporation.

2. The writ petitioner was working as Assistant Agronomist under the Hindustan Fertilizer Corporation with all India transfer liability. He was transferred from Bihar and posted in the office of the Corporation at Nagaon. For unauthorized absence his name has been struck-off from the roll by the order dated 6.9.1994. The order reads as follows :-

HINDUSTAN FERTILIZER CORPORTION LIMITED
FERTILIZER PROMOTION & AGRICULTURAL
RESEARCH DIVISION
ASSAM REGION : GUWAHATI.

Personnel Department

No.FP&ARD/Gau/Pers/Leave/2480 Date : 6.9.94

MEMORANDUM

Shri B.N. Prasad, Asstt. Agronomist E/No.930/ 0103 has been absenting from his duties without permission and information since 2.3.94.

As per leave Rule No.6.1 - Absence without permission for more than 10 days will be treated as voluntary abandonment of his employment and his name will be struck off from the rolls of the Corporation without any notice to the employee and the employee whose name is struck off the rolls for unauthorized absence may however, represent to the Competent Authority giving reasons why he did not or could not apply for leave etc. and if the Competent Authority is satisfied with the explanation, the said authority may grant the leave or take whatever decision is called for on merit.

Shri B.N. Prasad's absence from 2.3.94 has been treated under the above quoted Rule and his name has been struck off from the roll of the Corporation w.e.f. 2.3.94.

This issues with the approval of the Competent Authority.

Sd/-
(S. Rahman)
Regional Chief Agronomist
Guwahati

3. It would appear from the Rule referred to above that an employee whose name is struck off from the roll is entitled to submit a representation to the competent authority giving reasons as to why he did not or could not apply for leave and the competent authority if satisfied has been authorized to grant the said leave and take whatever decision as may be deemed necessary on merit.

4. There is no denial to the fact that the petitioner had submitted a representation after his name was struck off from the roll of the Corporation. The said representation, as submitted by Mr. Bhuyan, has not yet been disposed of. Mr. Bhuyan therefore, submits that a direction may be given to the Corporation to dispose of the representation on merit. Mr. Bhuyan further submitted that the petitioner also sent a telegram requesting for extension of leave and, thereafter, forwarded a medical certificate in support of his contention made in the represe

ntation.

5. Mr. Dasgupta, learned counsel for the Corporation, with reference to the documents annexed to the affidavit-in-opposition, pointed out that the petitioner has been indulging in remaining on unauthorized absence habitually and the representation in question has been submitted after lapse of one year from the date of the impugned order passed by the authority.

6. There may be good grounds for striking off the name of the petitioner from the roll and the adequacy of the same right at this moment cannot be considered by this Court in exercise of its powers under Article 226. The Corporation being the employer has to take a decision on the representation at the first instance and pass appropriate orders either allowing or rejecting the representation. Since the rule vests with the petitioner a right to represent against his removal from service, consequently the Corporation is also vested with the obligation to dispose of the representation in accordance with the provisions of law. In the instant case, Corporation is to pass an order. Therefore, it would be apposite to refer the matter back to the Corporation to consider the representation and pass appropriate orders on merit in accordance with the provisions of law.

7. The writ petition is disposed of with direction to the Corporation, particularly the Respondent No.1 to pass appropriate orders in accordance with the provisions of law disposing of the representation dated 3.11.1995 submitted by the writ petitioner. Needless to say that the Corporation shall endeavour to pass the order within a period of three months from the day when a copy of this order is served. If any amount is due to the petitioner on account of the services rendered by him, the same shall be paid to him as and when asked for.